

ANNUAL REPORT  
OF THE  
CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE



Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, Indiana 46204

October, 2012



# INDIANA LEGISLATIVE COUNCIL

## 2012

Senator David Long

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Fort Wayne

Speaker Brian Bosma

Chairperson

Indianapolis

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Representative Linda Lawson

Hammond

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Representative William Friend

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Senator Brent Steele

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Representative Timothy Brown

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Senator James Arnold

LaPorte

Representative Vanessa Summers

Indianapolis

Senator Timothy Lanane

Anderson

John M. Ross  
Executive Director  
Legislative Services Agency



# INDIANA CHILD CUSTODY AND SUPPORT ADVISORY COMMITTEE

## Membership Roster

### Senators

Brent Steele  
Bedford

Susan Glick  
LaGrange

Karen Tallian  
Portage

Greg Taylor  
Indianapolis

### Representatives

Randy Frye, Chairperson  
Indianapolis

Phyllis Pond  
New Haven

Vanessa Summers  
Indianapolis

John Day  
Indianapolis

### Laymembers

Bruce Pennamped  
Indianapolis

Magistrate Kimberly D. Mattingly  
Indianapolis

Peter Nugent  
Indianapolis

Kathryn Hillebrands Burroughs  
Carmel

### Staff

Eliza Houston Stephenson  
Attorney for the Committee

Andrew Hedges  
Attorney for the Committee

Bill Brumbach  
Fiscal Analyst for the Committee

A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.



## **I. STATUTORY AND LEGISLATIVE COUNCIL DIRECTIVES**

The Indiana General Assembly enacted IC 33-24-11-6 directing the Committee to do the following:

(a) The committee shall review the child support guidelines adopted by the supreme court. The committee shall make recommendations, if appropriate, concerning any amendments to the guidelines. In reviewing the guidelines and formulating recommendations, the committee shall consider all relevant matters, including the following:

- (1) The mathematics pertaining to the child support guideline chart.
- (2) The actual costs of supporting a child.
- (3) Whether it is appropriate to calculate child support guideline amounts based primarily upon the ability of the parent to pay rather than the financial needs of the child.
- (4) Equality of child support awards for the children of the parties, regardless of birth order.
- (5) A mechanism that may be employed to modify the amount of support to be paid due to a change in financial circumstances or a change in the number of children being supported by either parent.
- (6) The age of a child to the extent that the child may require different amounts of support at different ages.
- (7) Clarification regarding under what circumstances, if any, support may be abated.
- (8) A mechanism that may be employed to ensure that the guidelines are applied flexibly.
- (9) The application of the guidelines to a split custody situation.
- (10) Whether it is appropriate to base child support guidelines upon the premise that the child should enjoy the same standard of living that the child would have enjoyed if the family remained intact.

(b) In addition to the duties set forth in subsection (a), the committee shall review custody and educational expenses and other items relating to the welfare of a child of a family that is no longer intact.

The Legislative Council assigned to the Committee the additional responsibility of studying the termination of parenting rights of an individual with respect to a child who was conceived as a result of an act of rape by the individual. (SEA 190).

## **II. SUMMARY OF WORK PROGRAM**

The Committee met two times during the 2012 interim, on August 22 and October 2. The meetings were held at the State House in Indianapolis.



### **III. SUMMARY OF TESTIMONY**

For a more detailed account, minutes from the Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>

The first reference to a witness includes the name of the witness and the person or organization the witness represents. For brevity, any subsequent reference includes only the name of the witness. A witness list is included at the end of the report.

#### **August 22, 2012 Meeting**

##### **Equal Access to School Information for Custodial and Noncustodial Parents**

Representative Pond testified that a constituent believed that IC 20-33-7-2 (requiring that custodial and noncustodial parents receive equal access to certain school information) was not being followed. Representative Pond contacted the school in question and determined that the constituent's concerns were the result of a misunderstanding. She requested that the Committee take no action on this issue.

##### **SB 190-2012**

Representative Frye introduced SB 190 (dealing with the parental rights of a rapist with respect to a child who is the result of the rape) and noted that the Legislative Council had assigned this topic to the Committee.

Andrew Hedges, Legislative Services Agency Attorney, distributed a copy of the introduced version of the bill and gave an overview of certain issues relating to SB 190 that were raised during the 2012 session.

Peter Nugent, a member of the Committee, and Senator Tallian suggested the issue addressed in SB 190 was very limited - perhaps involving one case - and could be addressed using current law.

Representative Jud McMillin, testifying as a witness, agreed that this legislation was perhaps not necessary and that he could not imagine that a court would grant a rapist parental rights. He and Representative Pond also expressed concern that the bill could be misused in custody disputes.

Senator Tallian, Representative Summers, and Representative Pond stated that removing the discretion of the court was often a bad idea. Bruce Pennamped, a member of the Committee, noted that courts have discretion concerning custody and parenting time but that courts cannot terminate parental rights.

Senator Glick testified that termination of parental rights was a good policy and that SB 190 would be helpful because it would give courts the ability to terminate parental rights.



Following further discussion, the Committee recommended 7-1 that the General Assembly not enact a bill similar to SB 190-2012 because existing remedies are adequate to address the problem.

### SEA 18-2012

Senator Tallian informed the Committee that a group of attorneys in her district had pointed to certain inconsistencies in SEA 18-2012 (reducing the age of emancipation to 19 for child support purposes), and Representative Frye placed this issue on the agenda for the following meeting.

### **October 2, 2012 Meeting**

#### Preliminary Draft (PD) 3246

Ms. Melissa Cohen, President of the Women Lawyers Association (Association), discussed how the Association created a committee to address concerns raised by SEA 18-2012 and said that PD 3246 included the committee's recommended changes. Ms. Cohen indicated that the main concern involved the differences between the paternity statute (IC 31-14-11-18) and the dissolution statute (IC 31-16-6-6) and that there may be issues concerning equal protection because of the differences between the statutes.

Judge Elizabeth Tavitas of Lake County Superior Court, Civil Division, expressed concern with the disparity between the paternity statute and the dissolution statute. She also indicated that under PD 3246 the duty to support a child would continue if the child was less than 21 years of age and a high school student or in a program leading to a general education development (GED) program.

Mr. Pennamped, a member of the Committee, agreed with addressing the disparity between the statutes but had concerns with the language in PD 3246 concerning continuing child support for a child who was still in high school or a GED program.

Senator Steele stated that the Committee compromised on stopping child support at the age of 19 last year and that a very small percentage of children graduate from high school at 19 years of age. He explained that he tried to correct the disparity between the paternity statute and the dissolution statute in a conference committee report for SB 18-2012 but that one of the conferees did not sign the report.

Magistrate Nanette Raduenz of Lake County Superior Court clarified the intent of the language in PD 3246 and noted the disparity between the paternity statute and the dissolution statute.

Judge John Sedia of Lake County Superior Court noted that PD 3246 is an attempt to bring the paternity statute and dissolution statute in line and requested the changes be effective retroactively.



Mr. Andrew Soshnick, representing the Indiana State Bar Association, Family and Juvenile Law Section, requested that the paternity statute and the dissolution statute be identical. He also expressed concern with the language in PD 3246 regarding educational needs being determined in accordance with the child support guidelines adopted by the Indiana Supreme Court. He stated that there is a lot of common law on educational expenses.

Mr. Robert Monday with the Children's Rights Council stated that children who are wards of the state are also not treated the same, as their support is cut off at 18 years of age. He also stated that extending the language to 21 would do a disservice to those individuals who supported SB 18-2012.

Judge Sedia noted that wards of the state are not cut off at 18 years of age and that there is a program to help children who were wards of the state with housing and school.

Mr. Nugent, a Committee member, agreed that the paternity statute and the dissolution statute should be the same but expressed concerns that PD 3246 went beyond this change.

Senator Steele moved that the Committee adopt a bill to add the same language in the dissolution statute that was added into the paternity statute in SEA 18-2012 and to make the bill draft retroactive to the date that SEA 18-2012 became effective.

#### Other Business

Senator Tallian discussed an email she received from a software developer who expressed concerns about the computer system used to collect and disburse child support in Indiana. Ms. Brady Brooks, Legislative Director for the Department of Child Services, said that she believed discussions on updating the system were already occurring.

### **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

By a vote of 8-0, the Committee approved Senator Steele's motion to adopt a bill to add the same language in the dissolution statute that was added into the paternity statute in SEA 18-2012 and to make the bill draft retroactive to the date that SEA 18-2012 became effective.



WITNESS LIST

Representative Jud McMillin

Ms. Melissa Cohen

Judge Elizabeth Tavitaz

Magistrate Nanette Raduenz

Judge John Sedia

Mr. Andrew Soshnick

Mr. Robert Monday

Ms. Brady Brooks